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11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13

14 PHOEBE POWELL,
15 Plaintiff,

16 v.

17 ALEJANDRO MAYORKAS, Secretary,
United States Department of Homeland
18 Security,
19 Defendant.

Case No. 2:22-cv-02444-MWF-RAO

**~~[PROPOSED]~~ STIPULATED
PROTECTIVE ORDER¹**

Honorable Rozella A. Oliver
United States Magistrate Judge

20
21 1. A. PURPOSES AND LIMITATIONS

22 Discovery in this action is likely to involve production of confidential, proprietary,
23 or private information for which special protection from public disclosure and from use
24 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the
25 parties hereby stipulate to and petition the Court to enter the following Stipulated
26 Protective Order. The parties acknowledge that this Order does not confer blanket
27

28 ¹ This Stipulated Protective Order is substantially based on the model protective
order provided under Magistrate Judge Rozella A. Oliver's Procedures.

1 protections on all disclosures or responses to discovery and that the protection it affords
2 from public disclosure and use extends only to the limited information or items that are
3 entitled to confidential treatment under the applicable legal principles. The parties further
4 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does
5 not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth
6 the procedures that must be followed and the standards that will be applied when a party
7 seeks permission from the court to file material under seal.

8 B. GOOD CAUSE STATEMENT

9 Good cause exists for the entry of this protective order, because discovery in this
10 action is likely to involve production of employee disciplinary histories, personnel actions,
11 and other personal information that is subject to the provision of the Privacy Act of 1974,
12 5 U.S.C. § 552a and could result in unnecessary harm to these employees, including
13 embarrassment and invasion of their privacy. See Fed. R. Civ. P. 26(c)(1). Accordingly,
14 to expedite the flow of information, to facilitate the prompt resolution of disputes over
15 confidentiality of discovery materials, to adequately protect information the parties are
16 entitled to keep confidential, to ensure that the parties are permitted reasonable necessary
17 uses of such material in preparation for and in the conduct of trial, to address their handling
18 at the end of the litigation, and serve the ends of justice, a protective order for such
19 information is justified in this matter. It is the intent of the parties that information will not
20 be designated as confidential for tactical reasons and that nothing be so designated without
21 a good faith belief that it has been maintained in a confidential, non-public manner, and
22 there is good cause why it should not be part of the public record of this case.

23 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

24 The parties further acknowledge, as set forth in Section 12.3, below, that this
25 Stipulated Protective Order does not entitle them to file confidential information under
26 seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the
27 standards that will be applied when a party seeks permission from the court to file material
28 under seal.

1 There is a strong presumption that the public has a right of access to judicial
2 proceedings and records in civil cases. In connection with non-dispositive motions, good
3 cause must be shown to support a filing under seal. *See Kamakana v. City and County of*
4 *Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006); *Phillips v. Gen. Motors Corp.*, 307 F.3d
5 1206, 1210-11 (9th Cir. 2002); *Makar-Welbon v. Sony Electronics, Inc.*, 187 F.R.D. 576, 577
6 (E.D. Wis. 1999) (even stipulated protective orders require good cause showing), and a
7 specific showing of good cause or compelling reasons with proper evidentiary support and
8 legal justification, must be made with respect to Protected Material that a party seeks to
9 file under seal. The parties' mere designation of Disclosure or Discovery Material as
10 CONFIDENTIAL does not—without the submission of competent evidence by
11 declaration, establishing that the material sought to be filed under seal qualifies as
12 confidential, privileged, or otherwise protectable—constitute good cause.

13 Further, if a party requests sealing related to a dispositive motion or trial, then
14 compelling reasons, not only good cause, for the sealing must be shown, and the relief
15 sought shall be narrowly tailored to serve the specific interest to be protected. *See Pintos*
16 *v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item or type of
17 information, document, or thing sought to be filed or introduced under seal in connection
18 with a dispositive motion or trial, the party seeking protection must articulate compelling
19 reasons, supported by specific facts and legal justification, for the requested sealing order.
20 Again, competent evidence supporting the application to file documents under seal must
21 be provided by declaration.

22 Any document that is not confidential, privileged, or otherwise protectable in its
23 entirety will not be filed under seal if the confidential portions can be redacted. If
24 documents can be redacted, then a redacted version for public viewing, omitting only the
25 confidential, privileged, or otherwise protectable portions of the document shall be filed.
26 Any application that seeks to file documents under seal in their entirety should include an
27 explanation of why redaction is not feasible.
28

2. DEFINITIONS

2.1 Action: *Phoebe Powell v. Alejandro Mayorkas, Secretary, United States Department of Homeland Security*, Case No. 2:22-cv-02444-MWF-RAO

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

2.8 House Counsel: attorneys who are employees of a party to this Action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a party to this Action but are retained to represent or advise a party to this Action and have appeared in this Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party, and includes support staff.

1 2.11 Party: any party to this Action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their
3 support staffs).

4 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
5 Material in this Action.

6 2.13 Professional Vendors: persons or entities that provide litigation support
7 services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
9 their employees and subcontractors.

10 2.14 Protected Material: any Disclosure or Discovery Material that is designated
11 as “CONFIDENTIAL.”

12 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from
13 a Producing Party.

14
15 3. SCOPE

16 The protections conferred by this Stipulation and Order cover not only Protected
17 Material (as defined above), but also (1) any information copied or extracted from
18 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
19 Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel
20 that might reveal Protected Material.

21 Any use of Protected Material at trial shall be governed by the orders of the trial
22 judge. This Order does not govern the use of Protected Material at trial.

23
24 4. DURATION

25 Except as to Protected Material that becomes public in connection with filings or
26 proceedings in this litigation (e.g., at trial or on appeal), the confidentiality obligations
27 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in
28 writing or a court order otherwise directs even after final disposition. Final disposition

1 shall be deemed to be the later of (1) dismissal of all claims and defenses in this Action,
2 with or without prejudice; and (2) final judgment herein after the completion and
3 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including
4 the time limits for filing any motions or applications for extension of time pursuant to
5 applicable law.

6
7 **5. DESIGNATING PROTECTED MATERIAL**

8 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each
9 Party or Non-Party that designates information or items for protection under this Order
10 must take care to limit any such designation to specific material that qualifies under the
11 appropriate standards. The Designating Party must designate for protection only those
12 parts of material, documents, items, or oral or written communications that qualify so that
13 other portions of the material, documents, items, or communications for which protection
14 is not warranted are not swept unjustifiably within the ambit of this Order.

15 Mass, indiscriminate, or routinized designations are prohibited. Designations that
16 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
17 to unnecessarily encumber the case development process or to impose unnecessary
18 expenses and burdens on other parties) may expose the Designating Party to sanctions.

19 If it comes to a Designating Party's attention that information or items that it
20 designated for protection do not qualify for protection, that Designating Party must
21 promptly notify all other Parties that it is withdrawing the inapplicable designation.

22 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
23 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
24 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
25 must be clearly so designated before the material is disclosed or produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (e.g., paper or electronic
28 documents, but excluding transcripts of depositions or other pretrial or trial proceedings),

1 that the Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter
2 “CONFIDENTIAL legend”), to each page that contains protected material. If only a
3 portion or portions of the material on a page qualifies for protection, the Producing Party
4 also must clearly identify the protected portion(s) (e.g., by making appropriate markings
5 in the margins).

6 A Party or Non-Party that makes original documents available for inspection need
7 not designate them for protection until after the inspecting Party has indicated which
8 documents it would like copied and produced. During the inspection and before the
9 designation, all of the material made available for inspection shall be deemed
10 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
11 copied and produced, the Producing Party must determine which documents, or portions
12 thereof, qualify for protection under this Order. Then, before producing the specified
13 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
14 that contains Protected Material. If only a portion or portions of the material on a page
15 qualifies for protection, the Producing Party also must clearly identify the protected
16 portion(s) (e.g., by making appropriate markings in the margins).

17 (b) deposition testimony that may contain Protected Material should be so
18 designated by verbal notice or written notice within 14 days of receipt of the transcript.
19 However, testimony containing Protected Material that is not designated, through mistake,
20 nonetheless must be safeguarded against unauthorized disclosure. Alternatively, during
21 the course of a deposition, when the questioning attorney reaches a subject matter that
22 could reasonably be expected to result in the production of protected information, the
23 parties may stipulate to designate any portion or portions of the deposition testimony as
24 “CONFIDENTIAL”.

25 (c) for information produced in some form other than documentary and
26 for any other tangible items, that the Producing Party affix in a prominent place on the
27 exterior of the container or containers in which the information is stored the legend
28 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection,

1 the Producing Party, to the extent practicable, shall identify the protected portion(s).

2 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
3 to designate qualified information or items does not, standing alone, waive the Designating
4 Party's right to secure protection under this Order for such material. Upon timely
5 correction of a designation, the Receiving Party must make reasonable efforts to assure
6 that the material is treated in accordance with the provisions of this Order.

7
8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
10 of confidentiality at any time that is consistent with the Court's Scheduling Order.

11 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
12 process under Local Rule 37.1 et seq.

13 6.3 The burden of persuasion in any such challenge proceeding shall be on the
14 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
15 harass or impose unnecessary expenses and burdens on other parties) may expose the
16 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the
17 confidentiality designation, all parties shall continue to afford the material in question the
18 level of protection to which it is entitled under the Producing Party's designation until the
19 Court rules on the challenge.

20
21 7. ACCESS TO AND USE OF PROTECTED MATERIAL

22 7.1 Basic Principles. A Receiving Party may use Protected Material that is
23 disclosed or produced by another Party or by a Non-Party in connection with this Action
24 only for prosecuting, defending, or attempting to settle this Action. Such Protected
25 Material may be disclosed only to the categories of persons and under the conditions
26 described in this Order. When the Action has been terminated, a Receiving Party must
27 comply with the provisions of section 13 below (FINAL DISPOSITION).

28 Protected Material must be stored and maintained by a Receiving Party at a location

1 and in a secure manner that ensures that access is limited to the persons authorized under
2 this Order.

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
4 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
5 may disclose any information or item designated “CONFIDENTIAL” only to:

6 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
7 well as employees of said Outside Counsel of Record to whom it is reasonably necessary
8 to disclose the information for this Action;

9 (b) the officers, directors, and employees (including House Counsel) of
10 the Receiving Party to whom disclosure is reasonably necessary for this Action;

11 (c) Experts (as defined in this Order) of the Receiving Party to whom
12 disclosure is reasonably necessary for this Action and who have signed the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (d) the court and its personnel;

15 (e) court reporters and their staff;

16 (f) professional jury or trial consultants, mock jurors, and Professional
17 Vendors to whom disclosure is reasonably necessary for this Action and who have signed
18 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (g) the author or recipient of a document containing the information or a
20 custodian or other person who otherwise possessed or knew the information;

21 (h) during their depositions, witnesses ,and attorneys for witnesses, in the
22 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
23 requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not
24 be permitted to keep any confidential information unless they sign the “Acknowledgment
25 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
26 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to
27 depositions that reveal Protected Material may be separately bound by the court reporter
28 and may not be disclosed to anyone except as permitted under this Stipulated Protective

1 Order; and

2 (i) any mediator or settlement officer, and their supporting personnel,
3 mutually agreed upon by any of the parties engaged in settlement discussions.
4

5 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
6 OTHER LITIGATION

7 If a Party is served with a subpoena or a court order issued in other litigation that
8 compels disclosure of any information or items designated in this Action as
9 “CONFIDENTIAL,” that Party must:

10 (a) promptly notify in writing the Designating Party. Such notification
11 shall include a copy of the subpoena or court order;

12 (b) promptly notify in writing the party who caused the subpoena or order
13 to issue in the other litigation that some or all of the material covered by the subpoena or
14 order is subject to this Protective Order. Such notification shall include a copy of this
15 Stipulated Protective Order; and

16 (c) cooperate with respect to all reasonable procedures sought to be
17 pursued by the Designating Party whose Protected Material may be affected.

18 If the Designating Party timely seeks a protective order, the Party served with the
19 subpoena or court order shall not produce any information designated in this action as
20 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
21 issued, unless the Party has obtained the Designating Party’s permission. The Designating
22 Party shall bear the burden and expense of seeking protection in that court of its
23 confidential material and nothing in these provisions should be construed as authorizing
24 or encouraging a Receiving Party in this Action to disobey a lawful directive from another
25 court.
26
27
28

1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
2 IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a
4 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
5 produced by Non-Parties in connection with this litigation is protected by the remedies
6 and relief provided by this Order. Nothing in these provisions should be construed as
7 prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to
9 produce a Non-Party’s confidential information in its possession, and the Party is subject
10 to an agreement with the Non-Party not to produce the Non-Party’s confidential
11 information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the
13 Non-Party that some or all of the information requested is subject to a confidentiality
14 agreement with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated
16 Protective Order in this Action, the relevant discovery request(s), and a reasonably specific
17 description of the information requested; and

18 (3) make the information requested available for inspection by the
19 Non-Party, if requested.

20 (c) If the Non-Party fails to seek a protective order from this court within
21 14 days of receiving the notice and accompanying information, the Receiving Party may
22 produce the Non-Party’s confidential information responsive to the discovery request. If
23 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
24 information in its possession or control that is subject to the confidentiality agreement with
25 the Non-Party before a determination by the court. Absent a court order to the contrary,
26 the Non-Party shall bear the burden and expense of seeking protection in this court of its
27 Protected Material.
28

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated

1 Protective Order. Similarly, no Party waives any right to object on any ground to use in
2 evidence of any of the material covered by this Protective Order.

3 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
4 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
5 under seal pursuant to a court order authorizing the sealing of the specific Protected
6 Material at issue. If a Party's request to file Protected Material under seal is denied by the
7 court, then the Receiving Party may file the information in the public record unless
8 otherwise instructed by the court.

9
10 13. FINAL DISPOSITION

11 After the final disposition of this Action, as defined in paragraph 4, within 60 days
12 of a written request by the Designating Party, each Receiving Party must return all
13 Protected Material to the Producing Party or destroy such material. As used in this
14 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
15 summaries, and any other format reproducing or capturing any of the Protected Material.
16 Whether the Protected Material is returned or destroyed, the Receiving Party must submit
17 a written certification to the Producing Party (and, if not the same person or entity, to the
18 Designating Party) by the 60 day deadline that (1) identifies (by category, where
19 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
20 the Receiving Party has not retained any copies, abstracts, compilations, summaries or any
21 other format reproducing or capturing any of the Protected Material. Notwithstanding this
22 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers,
23 trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition
24 and trial exhibits, expert reports, attorney work product, and consultant and expert work
25 product, even if such materials contain Protected Material. Any such archival copies that
26 contain or constitute Protected Material remain subject to this Protective Order as set forth
27 in Section 4 (DURATION).

14. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.
IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: September 26, 2023 Respectfully submitted,

LAW OFFICE OF EDWARD J. BLUM

/s/ Edward J. Blum

EDWARD J. BLUM

Attorney for Plaintiff
Phoebe Powell

Dated: September 26, 2023

E. MARTIN ESTRADA

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/s/ Erin Choi

ERIN CHOI

Assistant United States Attorney

Attorneys for Defendant Alejandro Mayorkas
Secretary, United States Department of Homeland
Security

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: September 26, 2023

Rozella A. Oliver

HONORABLE ROZELLA A. OLIVER

United States Magistrate Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury that I
 have read in its entirety and understand the Stipulated Protective Order that was issued by
 the United States District Court for the Central District of California on [date] in the case
 of *Phoebe Powell v. Alejandro Mayorkas, Secretary, United States Department of*
Homeland Security, Case No. 2:22-cv-02444-MWF-RAO. I agree to comply with and to
 be bound by all the terms of this Stipulated Protective Order and I understand and
 acknowledge that failure to so comply could expose me to sanctions and punishment in
 the nature of contempt. I solemnly promise that I will not disclose in any manner any
 information or item that is subject to this Stipulated Protective Order to any person or
 entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
 the Central District of California for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this
 action. I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone
 number] as my California agent for service of process in connection with this action or
 any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____